

## REMARKS

In the Office Action mailed December 21, 2010, claims 1-9, 11, 12 and 15-42 are rejected. Claims 1, 15, 26, 29, and 36 are currently amended. Withdrawal of the rejections and reconsideration and allowance of claims 1-9, 11, 12 and 15-42 are respectfully requested in view of the following remarks.

### **Rejections under 35 U.S.C. § 101**

Claim 19 is rejected under 35 U.S.C. 101. Applicants respectfully assert that subject matter disclosed in claim 19 is permissible and appropriately claimed. See, e.g., *Ex Parte Bo Li*, Appeal no. 2008-1213 (BPAI, Nov. 6, 2008) (holding that “A computer program product, comprising a computer usable medium having a computer readable program code embodied therein, said computer readable program code adapted to be executed to implement a method for generating a report...” was statutory under 35 U.S.C. 101).

### **Rejections under 35 U.S.C. § 103**

A. Claims 1-9, 11, 12, 15-29, 32, 34-37, 39, and 41-42, are rejected under 35 U.S.C. 103(a) as being unpatentable over Sullivan et al. (US 2001/0018665 A1) in view of Mitchell (US 7,496,525) in view of Hisamatsu (US 2002/0007328).

Claim 1, as amended, is directed to a computer-implemented method for the purchase and sale of products by purchasers and sellers in a marketplace. As amended, Claim 1 recites steps of a first sale transaction by a first end user, a second sale transaction between the first end user and a seller in which the purchased product is an unwanted product to the first end user, and a third sale transaction between a purchaser and the seller. Claim 1 also recites “distributing the manufacturer incentive solely to the manufacturer, wherein the manufacturer incentive is distributed as a result of the third sale transaction, wherein the first end user, seller and purchaser do not receive an incentive from the third sale transaction.” Independent claims 15, 29 and 36 recite similar limitations.

The combination of Sullivan, Mitchell and Hisamatsu fails to teach all claim elements. The Examiner states that “Mitchell further discloses wherein the products were previously sold

by the manufacturer in a first sale transaction and the manufacturer incentive is distributed as a result of the subsequent sale transaction (Note that this can be interpreted as the manufacturer selling the product to the seller/retailer, then the seller/retailer selling the product to the end shopper, then the manufacturer receiving an incentive after the seller/retailer sale to the end user)... Hence, in Mitchell, the product goes from the manufacturer to [a] distributor/retailer then to an end shopper... Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, that the manufacturer can provide the product to a retailer/seller who provides the product to an end user and that the manufacturer can be compensated after a sale by the retailer/seller.” (Pages 4-5 of the Office Action).

Sullivan in view of Mitchell in view of Hisamatsu, however, do not describe and would not have made obvious a first sale transaction of a purchase of a product by a first end user, a second sale transaction between the first end user and a seller in which the purchased product is an unwanted product to the first end user, and a third sale transaction between a purchaser and the seller, as recited in independent claim 1. Rather, in Mitchell, as the Examiner states, the product goes from the manufacturer to a distributor/retailer then to an end shopper.

Further, the Examiner states that “the money in Mitchell going back to the manufacturer after a sale (Fig. 9) functions as a manufacturer incentive. As a further example of this, Hisamatsu discloses excess profits after successful sales being reward back to the manufacturer... Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add sharing excess profits back to the manufacturer as a manufacturer incentive.” (Page 5 of the Office Action). While Sullivan in view of Mitchell in view of Hisamatsu discuss “credits” or “excess profits,” Sullivan in view of Mitchell in view of Hisamatsu do not describe and would not have made obvious the manufacturer incentive which is distributed as a result of a sale transaction of an unwanted product, as recited in independent claim 1.

Independent claims 15, 29 and 36 are patentable for at least the similar reasons as those provided with respect to claim 1. Since independent claims 1, 15, 29 and 36 are patentable over Sullivan in view of Mitchell in view of Hisamatsu, the related dependent claims which recite additional limitations, are also patentable. Withdrawal of this rejection is respectfully requested.

B. Claims 31, 33, 38, and 40 are rejected under 35 U.S.C. 103(a) over Sullivan et al. (US 2001/0018665 A1) in view of Mitchell (US 7,496,525) in view of Hisamatsu (US 2002/0007328) in view of Woolston (US 5,845,265).

Nothing in Woolston noted by the Examiner overcomes the deficiencies above with respect to Sullivan, Mitchell, and Hisamatsu. Accordingly, these references are insufficient to support a rejection of these claims which depend from independent claims 29 and 36 under 35 U.S.C. §103(a) even if these references were combined.

Accordingly, Applicants contend that related dependent claims 31, 33, 38 and 40 are allowable, and respectfully requests this rejection be withdrawn.

It shall be understood herein that any instance in which the Applicants have addressed certain comments of the Examiner shall not be construed as a concession to any comments or arguments advanced by the Examiner. Further, any circumstance in which the Applicants have made arguments for the patentability of some claims does not mean that there are not other valid reasons for patentability of those claims and other pending claims. Any circumstance in which the Applicants have amended or canceled a claim also does not mean necessarily that the Applicants concede to the arguments or positions advanced by the Examiner with respect to that claim or other claims pending herein.

### CONCLUSION

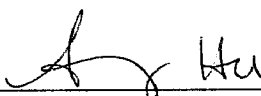
Applicants submit that this paper fully addresses the Office Action mailed on December 21, 2010. Should the Examiner have any question, the Examiner is encouraged to contact the undersigned.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 23-2415 (Attorney Docket No. 38606-701.201) for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

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